IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Michael L. Fisher, Thomas Fisher, Eugene Fisher, Dickinson Ready Mix, a North Dakota corporation, Fisher Industries, Inc., a North Dakota corporation, International Technical Coatings, Inc., an Arizona corporation, Johnnie L Caldwell, Plaintiffs, vs. Dakota Community Bank, a bank licensed and existing under the laws of North Dakota, and Thyssen Mannesmann Handel GmbH, a German corporation, Defendants.	**ORDER ADOPTING REPORT AND RECOMMENDATION** Case No. A1-05-100

Before the Court are two motions to remand filed by the Plaintiffs on September 30, 2005. On October 5, 2005, defendant Dakota Community Bank joined the motion to remand. On October 31, 2005, the Court referred the motions to Magistrate Judge Charles S. Miller, Jr., for a Report and Recommendation. On November 7, 2005, Judge Miller issued a Report and Recommendation wherein he recommended the motions to remand be granted because (1) Dakota Community Banks is both a necessary and a real party in interest to one or more of the claims set forth in the amended complaint and not a nominal party whose presence may be ignored for purposed of determining jurisdiction; (2) complete diversity of citizenship is lacking and no other jurisdictional grounds for removal has been asserted; (3) Dakota Community Bank is a citizen of the State of North Dakota, which prohibits removal under 28 U.S.C. § 1441(b); and (4) Dakota Community Bank's failure to join in Thyssen's removal as required by § 1441 also prohibits removal. Defendant Thyssen filed an objection on November 23, 2005.

The Court has carefully reviewed the Report and Recommendation, relevant case law, the objections of Defendant Thyssen, and the record as a whole, and finds the Report and Recommendation

to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 24) in its entirety and **GRANTS** the Plaintiffs' Motions to Remand. (Docket Nos. 3, 6-2). The Court **DENIES** as moot the Plaintiffs' Motion for Leave to File a Second Amended Complaint (Docket No. 6-1) and Defendant Thyssen Mannesmann Handel GmbH's Motion to Dismiss (Docket No. 8).

IT IS SO ORDERED.

Dated this 2nd day of December, 2005.

Daniel L. Hovland, Chief Judge
United States District Court